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ABSTRACT

This class action suit by Massachusetts public school students challenges the nature of the Massachusetts Comprehensive Assessment System (MCAS) exam and its use as a graduation requirement. Public school students must pass this high stakes test in order to receive a high school diploma as of 2003. The plaintiffs are public school students in the Class of 2003 who failed the 10th grades MCAS exam and cannot receive a high school diploma. The class includes African-American students, Hispanic students, students with limited English proficiency, students with disabilities, students attending vocational technical education schools, and Holyoke School District students. The genesis of this lawsuit is the purported calculated and unlawful use of the exam to cover up historical and continuing failure of state and local education agencies and officials to ensure that all public school students receive the mandated high quality education. It seeks injunctive relief to bar the use of the exam as a graduation requirement in 2003 and thereafter. It also seeks a declaratory judgment that current use of the exam violates federal laws, several U.S. Constitutional provisions, the Massachusetts Constitution, and the Massachusetts Education Reform Act, and it seeks injunctive relief requiring state education officials to provide professional development to help public school teachers meet the educational needs of the plaintiffs. (SM)

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ED 470 557

Student v. Driscoll
Class Action Complaint

United States District Court

District of Massachusetts

September 19, 2002

UD 035 351

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STUDENT 1, A Minor, by His Aunt and Next Friend, STUDENT 2, A Minor, by Her Mother and Next Friend, STUDENT 3, A Minor, by Her Mother and Next Friend, STUDENT 4, A Minor, by His Mother and Next Friend, STUDENT 5, A Minor, by His Mother and Next Friend, and STUDENT 6, A Minor, by Her Grandmother and Next Friend, on Behalf of Themselves and All Other Persons Similarly Situated, Plaintiffs v. DAVID P. DRISCOLL, As Commissioner of Education, Department of Education for the Commonwealth of Massachusetts, DEPARTMENT OF EDUCATION FOR THE COMMONWEALTH OF MASSACHUSETTS, MASSACHUSETTS BOARD OF EDUCATION, JAMES A. PEYSER, Chairman, Massachusetts Board of Education, HENRY M. THOMAS, III, Vice-Chairperson, Massachusetts Board of Education, CHARLES D. BAKER, Member, Massachusetts Board of Education, J. RICHARD CROWLEY, Member, Massachusetts Board of Education, JUDITH I. GILL, Member, Massachusetts Board of Education, WILLIAM K. IRWIN, JR., Member, Massachusetts Board of Education, ROBERTA R. SCHAEFER, Member, Massachusetts Board of Education, ABIGAIL M. THERNSTROM, Member, Massachusetts Board of Education; HOLYOKE SCHOOL DISTRICT, HOLYOKE SCHOOL COMMITTEE, MARGARET M. BOULAIS, Member, Holyoke School Committee, WILLIAM COLLAMORE, Member, Holyoke School Committee, BARRY D. CONWAY, Member, Holyoke School Committee, YVONNE GARCIA, Member, Holyoke School Committee, MICHAEL J. MORIARY, Member, Holyoke School Committee, JOHN C. PIETRZYKOWSKI, Member, Holyoke School Committee, MARY C. PLANT, Member, Holyoke School Committee, PATRICK SHAUGHNESSY, Member, Holyoke School Committee, MARY S. SIGNET, Member, Holyoke School Committee and EDUARDO		CIVIL ACTION NO.

CARBALLO, As Superintendent of Holyoke Public Schools,

Defendants.

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is a class action brought by Massachusetts public school students challenging, on constitutional and statutory grounds, the nature of the Massachusetts Comprehensive Assessment System exam (the "MCAS exam"), and its use as a graduation requirement. The MCAS exam is a "high stakes" test that public school students must pass to receive a high school diploma. Beginning with the Class of 2003, all public school students must pass both the grade 10 English Language Arts and Mathematics sections of the MCAS exam to graduate, even though they have satisfied all other state and local school district graduation requirements. Students attending private high schools in Massachusetts are exempt from taking the MCAS exam.

2. The plaintiffs are public school students in the Class of 2003, who have failed the 10th grade MCAS exam. Thus, they are precluded from receiving a high school diploma. The plaintiffs bring this class action on behalf of themselves and a class of students who have failed the MCAS exam. The class includes the following six subclasses: (1) Black/African-American students, (2) Hispanic students, (3) students with limited English proficiency, (4) students with disabilities, (5) students attending vocational technical education schools, and (6) students attending schools in the Holyoke School District.

3. Currently, an alarming number of students in the Class of 2003 -- over twenty-four percent (24%), or approximately 16,000 students -- have not passed the MCAS exam. The

vast majority of these students are minority students, students residing in poor school districts, students attending low or under-performing schools, vocational technical education students, students with limited English proficiency and students with disabilities. This disturbing failure rate and the damage it is causing to the Commonwealth's students has troubled educators, parents and legislators.

4. The genesis of this lawsuit is the calculated and unlawful use of the MCAS exam as a means of covering-up the historical and continuing failure of various state and local education agencies and officials to ensure that all Massachusetts public school students receive a high quality education as required by law. From the inception of the Commonwealth, as reflected by the Education Clause in the Massachusetts Constitution, the public education of all its children, including those of lesser economic means, has been a central tenet of state public policy. Unfortunately, by the 1980s and early 1990s, unequal education pervaded the public school system of Massachusetts. Suburban schools located in wealthy school districts provided high quality education for their students, who were predominantly white. Urban schools located in poor areas throughout Massachusetts, where most of the state minority students were enrolled, were plagued by overcrowded classes, inadequate resources and inferior learning conditions. Consequently, thousands of public school students in urban and poor school districts received substandard, inferior and inadequate education.

5. The gross inequality of public school education galvanized several school districts to commence litigation against Massachusetts, asserting that the state had failed to provide all public school students with an adequate education in violation of the Massachusetts Constitution. In 1993, the Massachusetts Supreme Judicial Court, in the landmark case of *McDuffy v. Secretary of the Executive Office of Education*, ruled that the executive and legislative branches

of Massachusetts were obligated to provide an education for all public school children designed not only to "serve the interests of the children" but also "to prepare them to participate as free citizens of a free State to meet the needs and interests of a republican government."

6. Recognizing the plight of students in poor school districts and urban areas, the Massachusetts Legislature promptly responded by enacting the Massachusetts Education Reform Act, a sweeping statute aimed at overhauling and improving the quality of the state's public school system. A "paramount goal of the commonwealth," the statute declared, was "to provide a public education system of sufficient quality to extend to all children the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth." Consistent with that goal, the Massachusetts Education Reform Act's express purpose was to ensure that *all* public school children in Massachusetts receive a high quality education. Moreover, the law required the Massachusetts Board of Education to establish an "effective mechanism" to monitor progress toward attaining that goal and to hold "educators accountable for their achievement."

7. The Massachusetts Education Reform Act imposed rigorous requirements on the Massachusetts Board of Education and the Commissioner of Education to achieve its avowed goal of providing a high quality education to all students. The law required them to develop "academic standards" in several core subjects such as mathematics, English, science and history for all grades. The statute also required the Board of Education and the Commissioner of Education to formulate "curriculum frameworks" for the core subjects covered by the "academic standards." The "curriculum frameworks" were to provide teachers and administrators with pedagogical approaches and strategies for assisting students in developing the skills, knowledge and competency set forth in the "academic standards." The "academic standards" and the

"curriculum frameworks" were required to be designed to avoid perpetuating gender, cultural, ethnic or racial stereotypes.

8. Significantly, the statute contained express provisions requiring state education officials to hold schools accountable for properly teaching their students. It required the Board of Education to adopt a system known as the "Massachusetts Comprehensive Assessment System" (the "MCAS") for annually evaluating the "performance of public school districts and individual public schools." The law required the development of "assessment instruments designed to assess the extent to which schools and districts succeed in improving or fail to improve student performance" in the core subjects. The law further provided that the Board of Education and the Commissioner of Education adopt a *"system"* for evaluating student performance "designed both to measure outcomes and results regarding student performance, and to improve the effectiveness of curriculum and instruction." Simply put, the Board of Education, the Commissioner of Education and the Massachusetts Department of Education were legally obligated to ensure that the Legislature's educational mandate of improving the education of all public school students was met.

9. The state education officials have utterly failed to satisfy their important obligations and responsibilities owed to the state and its public school students. They did not establish the requisite "curriculum frameworks," including those for Mathematics and English Language Arts, in a timely manner. That undue delay hampered teachers' ability to learn the "curriculum frameworks" and then incorporate them in their class curriculum and instruction. Students, in turn, had insufficient time and opportunity to master the "academic standards" for the core subjects. The state education officials further failed to ensure that teachers in all school

districts actually taught students in conformance with the "curriculum frameworks," which adversely affected students' ability to learn the "academic standards" for the core subjects.

10. The state education officials then exceeded their statutory authority under the Massachusetts Education Reform Act by promulgating a regulation stating that all public school students must pass the MCAS exam as a graduation requirement beginning with the Class of 2003. Contrary to the state education officials' regulation, the Massachusetts Education Reform Act imposed no requirement that each student pass the MCAS exam as a high school graduation requirement. Rather, the MCAS exam was simply to be one element of a larger diagnostic and remedial system designed to improve teaching, learning and the education of *all* of Massachusetts public school students.

11. The state education officials compounded their inappropriate and unlawful conduct by developing an MCAS exam that is invalid and unlawful because it fails to comport with professionally accepted testing standards; unfairly discriminates against the plaintiffs; and has not been shown to test the plaintiffs on material that they have actually been taught. For example, many of the students who failed the MCAS exam are enrolled in school systems deemed to be "low-performing" by the state education officials. However, despite admitting that the students have not been provided with adequate learning opportunities, the state education officials paradoxically seek to test these students on the content, knowledge and skills that they have failed to ensure were actually taught to the students. In essence, the state educational officials now seek to punish, sacrifice and abandon thousands of students for their own failure to properly educate those students. As implemented, the MCAS exam patently violates federal and state law, including the Massachusetts Education Reform Act.

12. Prompted by the initial, draconian MCAS exam results, Massachusetts Attorney General Thomas F. Reilly publicly questioned the fairness of an education system that failed to support all students equally. In an Op-Ed piece published in *The Boston Globe* on December 11, 1999, the Attorney General expressed his grave concerns:

> *As a state, we are treading on the brink of a crisis that threatens to move our children into two separate and unequal school populations.* Reports on the MCAS results tell us that Latinos and Blacks failed at a rate twice that of white students. We also continue to see poor scores in districts where more of the students live below the poverty line and, as other statistics tell us, where there are more families at risk, more families headed by single parents, and more children suffering from the effects of abuse and neglect. We find the better scores in the wealthier districts, districts where we find more economic stability and more intact families or families with extended support groups. *Each new round of test results -- however we interpret the statistics -- emphasizes the danger that many of our school children from predominantly minority families and families in urban areas will be denied an education and so lose out on uncountable opportunities* (emphasis supplied).

Attorney General Reilly's voiced fears have become a stark reality.

13. The flawed and illegal use of the MCAS exam as a graduation requirement has caused untold damage to students throughout Massachusetts. Scores of students have dropped out of school after failing the MCAS exam, while many others have dropped-out to avoid taking the MCAS exam. Students who have failed the exam cannot continue their post-secondary education, and are disqualified from a host of public and private employment opportunities. All of these students have been improperly and unfairly stigmatized through their inability to pass this fundamentally flawed test. Ironically, despite the Commonwealth's expenditure of millions of dollars on education reform, the Massachusetts public school system is in the same state of disarray that existed before education reform, and remains an unequal school system.

14. The plaintiffs and the proposed class seek injunctive relief to bar use of the MCAS exam as a graduation requirement in 2003 and thereafter in a manner consistent with

their Request for Relief. They also seek a declaratory judgment that the current use of the MCAS exam violates various federal laws, several provisions of the United States Constitution, the Massachusetts Constitution and the Massachusetts Education Reform Act. Moreover, the plaintiffs seek injunctive relief requiring state education officials to provide professional development opportunities in order to prepare public school teachers to meet the educational needs of the plaintiffs' class and the subclasses.

II. JURISDICTION AND VENUE

15. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), 42 U.S.C. § 1983, 42 U.S.C. § 1988, 20 U.S.C. §§ 1706, 1708 and 29 U.S.C. § 794a. This Court also has supplemental jurisdiction over all state law claims pursuant to 28 U.S.C. § 1367(a). Venue is proper under 28 U.S.C. §1391(a) because the defendants are located in the District of Massachusetts and the causes of action arose in the District of Massachusetts.

III. THE PARTIES

A. PLAINTIFFS

16. The plaintiffs are students of the Massachusetts public high school Class of 2003 (the "Class of 2003"), and each succeeding class, who have failed to pass the required English Language Arts and/or Mathematics sections of the MCAS exam.

Student 1

17. Plaintiff Student 1 is a Hispanic student who resides in Leeds, Massachusetts, and attends a public vocational High School in Northampton.

18. Student 1 has been classified as having specific learning disabilities and receives special education. Student 1 was provided with an IEP that provided for him to receive vocational education. Student 1 has received good grades in mathematics and has excellent school attendance.

19. Student 1 has taken the MCAS exam and failed the Mathematics section, he has passed the English Language Arts section.

20. Student 1 represents the class of students who failed the MCAS exam and the subclasses of (1) Hispanic students, (2) students with disabilities and (3) students attending vocational technical educational schools.

21. Pursuant to Fed. R. Civ. P. 17(c), Student 1 brings this action by his aunt, IS, as next friend.

Student 2

22. Plaintiff Student 2 is a Hispanic student who resides in Holyoke, Massachusetts, and attends a public High School. Student 2 has limited English proficiency.

23. Before attending High School, Student 2 attended the Peck Middle School. The Commonwealth has identified the Peck Middle School as an "under-performing" school under M.G.L. c. 69, § 1J and 603 C.M.R. § 2.03. Both schools are part of the Holyoke School District, which has been adjudicated by the Massachusetts Supreme Judicial Court to have previously provided unequal educational opportunities under the Education Clause of the Massachusetts Constitution.

24. Student 2 has taken the MCAS exam and failed the Mathematics section; she has passed the English Language Arts section.

25. Student 2 represents the class of students who failed the MCAS exam and the subclasses of (1) Hispanic students, (2) students with limited English proficiency and (3) students attending schools in the Holyoke School District.

26. Pursuant to Fed. R. Civ. P. 17(c), Student 2 brings this action by her mother, ER, as next friend.

Student 3

27. Plaintiff Student 3 is a Hispanic student who resides in Holyoke, Massachusetts, and attends William J. Dean Vocational Technical High School in Holyoke.

28. Student 3 has been enrolled in the Holyoke Public Schools system since kindergarten. The Commonwealth has determined that Holyoke public schools include some of the poorest performing schools in the state. The Commonwealth has identified the William J. Dean Vocational Technical High School, where Student 3 is currently enrolled, as one of 21 high schools in the Commonwealth that met the criteria for consideration as a "chronically under-performing" public school under M.G.L. c. 69, § 1J and 603 C.M.R. § 2.03. The William J. Dean Vocational Technical High School is in the Holyoke School District, which has been adjudicated by the Massachusetts Supreme Judicial Court to have previously provided unequal educational opportunities under the Education Clause of the Massachusetts Constitution.

29. Student 3 has taken the MCAS exam and failed the Mathematics section twice; she passed the English Language Arts section.

30. Student 3 represents the class of students who failed the MCAS exam and the subclasses of (1) Hispanic students (2) students attending vocational technical education schools and (3) students attending schools in the Holyoke School District.

31. Pursuant to Fed. R. Civ. P. 17(c), Student 3 brings this action by her mother, RO, as next friend.

Student 4

32. Plaintiff Student 4 is a Hispanic student who resides in Holyoke, Massachusetts, and attends the William J. Dean Vocational Technical High School.

33. Student 4 is enrolled in the Holyoke Public Schools. The Commonwealth has identified the William J. Dean Vocational Technical High School, where Student 4 is currently enrolled, as one of 21 high schools in the Commonwealth that met the criteria for consideration as a "chronically under-performing" public school under M.G.L. c. 69, § 1J and 603 C.M.R. § 2.03. The Holyoke School District has been adjudicated by the Massachusetts Supreme Judicial Court to have previously provided unequal educational opportunities under the Education Clause of the Massachusetts Constitution.

34. Student 4 has taken the MCAS exam and failed the Mathematics section; he has passed the English Language Arts section.

35. Student 4 represents the class of students who failed the MCAS exam and the subclasses of (1) Hispanic students (2) students attending vocational technical education schools and (3) students attending schools in the Holyoke School District.

36. Pursuant to Fed. R. Civ. P. 17(c), Student 4 brings this action by his mother, MC, as next friend.

Student 5

37. Plaintiff Student 5 is a Hispanic student who resides in Holyoke, Massachusetts, and attends Holyoke High School.

38. The Holyoke Public School District has determined that Student 5 has a specific learning disability that affects his ability to read and requires him to receive special education. Student 5 has received special education under an Individualized Education Program ("IEP") developed by the Holyoke Public Schools.

39. Student 5 has taken the MCAS exam and failed the English Language Arts and the Mathematics sections. One hundred percent (100%) of the students with disabilities enrolled in Holyoke High School have failed the MCAS exam.

40. The Holyoke School District was among the Massachusetts school districts monitored by the United States Department of Education Office of Special Education Programming in 1997. It found that the Holyoke School District denied students with disabilities opportunities for participation in the general curriculum and to learn what all students are expected to learn. The Holyoke School District was also previously adjudicated by the Massachusetts Supreme Judicial Court to have provided unequal educational opportunities under the "Education Clause" of the Massachusetts Constitution.

41. Student 5 represents the class of students who failed the MCAS exam and the subclasses of (1) Hispanic students (2) students with disabilities and (3) students attending schools in the Holyoke School District.

42. Pursuant to Fed. R. Civ. P. 17(c), Student 5 brings this action by his mother, MS, as next friend.

Student 6

43. Plaintiff Student 6 is a Black/African-American student who resides in Springfield, Massachusetts, and attends a public High School.

44. Student 6 has taken the MCAS exam and failed the Mathematics section twice; she has passed the English Language Arts section.

45. Student 6 represents the class of students who failed the MCAS exam and the subclass of Black/African-American students.

46. Pursuant to Fed. R. Civ. P. 17(c), Student 6 brings this action by her grandmother, RN, as next friend.

CLASS ACTION ALLEGATIONS

47. The plaintiffs bring this action on behalf of themselves, all past and present Massachusetts public school members of the Class of 2003, and members of each succeeding class in the Commonwealth of Massachusetts who have failed the MCAS exam. The class includes six subclasses, which are described in this Class Action Complaint.

48. The plaintiffs bring this action pursuant to Fed. R. Civ. P. 23. With respect to this class:

(a) It is so numerous that joinder of all members is impractical, since there are approximately 16,000 public school students who are or were members of the Class of 2003 who have yet to pass the MCAS exam. As of September 2002, these students constituted over twenty-four percent (24%) of all members of the Class of 2003, which consisted of 68,118 students in 2001, and 63,767 in the fall of 2002;

(b) There are questions of law and fact common to the class, in that they have failed or will have failed the exam, and are protected by all statutory and constitutional provisions pertinent to this action;

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately represent the interests of the class;

(e) The defendants have acted in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

SUBCLASSES

1. Black/African-American Students

49. The plaintiffs bring this action on behalf of themselves and all present and future public school Black/African-American students in the Commonwealth of Massachusetts who have failed the MCAS exam. With respect to this subclass:

(a) It is so numerous that joinder of all members is impractical since as of September 2002, there are approximately 2,233 Black/African-American public school students of the Class of 2003 who have yet to pass the MCAS exam. These students represent approximately forty-four percent (44%) of all Black/African-American students who are members of the Class of 2003;

(b) There are questions of law and fact common to the class, in that they are Black/African-American, have failed or will have failed the MCAS exam, and are protected by all statutory and constitutional provisions pertinent to this action;

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately represent the interests of the class; and

(e) The defendants have acted in a manner generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

2. Hispanic Students

50. The plaintiffs bring this action on behalf of themselves and all present and future public school Hispanic students in the Commonwealth of Massachusetts who have failed the MCAS exam. With respect to this subclass:

(a) It is so numerous that joinder of all members is impractical since as of September 2002, there are approximately 2,642 Hispanic public school students in the Class of 2003 who have yet to pass the MCAS exam. These students represent fifty percent (50%) of all Hispanic students in the Class of 2003;

(b) There are questions of law and fact common to the class, in that they are Hispanic, have failed or will have failed the MCAS exam, and are protected by all statutory and constitutional provisions pertinent to this action;

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately represent the interests of the class; and

(e) The defendants have acted in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

3. Students with Limited English Proficiency

51. The plaintiffs bring this action on behalf of themselves and all present and future public school students with limited English proficiency in the Commonwealth of Massachusetts who have failed the MCAS exam. With respect to this subclass:

(a) It is so numerous that joinder of all members is impractical since as of September 2002, there are approximately 1,518 public school students with limited English proficiency in the Class of 2003 who have yet to pass the MCAS exam. These students represent sixty-five percent (65%) of all students with Limited English Proficiency in the Class of 2003;

(b) There are questions of law and fact common to the class, in that they have limited English proficiency, have failed or will have failed the MCAS exam, and are protected by all statutory and constitutional provisions pertinent to this action;

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately represent the interests of the class; and

(e) The defendants have acted in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

4. <u>Students with Disabilities</u>

52. The plaintiffs bring this action on behalf of themselves and all present and future public school students with disabilities in the Commonwealth of Massachusetts who have failed the MCAS exam. With respect to this subclass:

(a) It is so numerous that joinder of all members is impractical since as of September 2002, there are or were 5,130 eligible public school students with disabilities in

the Class of 2003 who have yet to pass the MCAS exam. These students represent sixty-four percent (64%) of all students with disabilities in the Class of 2003;

(b) There are questions of law and fact common to the class, in that they have disabilities, have failed or will have failed the MCAS exam, and are protected by all statutory and constitutional provisions pertinent to this action;

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately represent the interests of the class; and

(e) The defendants have acted in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

5. **Students Enrolled in Vocational Technical Education Schools**

53. The plaintiffs bring this action on behalf of themselves and all present and future public school students enrolled in vocational technical education high schools in the Commonwealth of Massachusetts who have failed the MCAS exam. With respect to this subclass:

(a) It is so numerous that joinder of all members is impractical since as of May 2002, there are approximately 2,582 public school students attending vocational technical education schools in the Class of 2003 who have yet to pass the exam. These students represent forty-four (44%) of all public school students attending vocational technical education schools who have not yet passed the MCAS exam;

(b) There are questions of law and fact common to the class, in that they are enrolled in vocational technical education schools, have failed or will have failed the MCAS exam, and are protected by all constitutional and statutory provisions pertinent to this action, including the Carl D. Perkins Vocational Education and Technology Act, 20 U.S.C. § 2301 *et seq.*;

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately represent the interests of the class; and

(e) The defendants have acted in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

6. **Students Attending Schools in the Holyoke School District**

54. The plaintiffs bring this action on behalf of themselves and all present and future public school students enrolled in schools in the Holyoke School District who have failed the MCAS exam. With respect to this subclass:

(a) It is so numerous that joinder of all members is impractical since as of the fall of 2002, there are approximately 165 public school students enrolled in the Holyoke School District who have yet to pass the MCAS exam. These students represent forty-one percent (41%) of all students enrolled in schools in the Holyoke School District who are members of the Class of 2003;

(b) There are questions of law and fact common to the class, in that they are students enrolled in the Holyoke School District who have failed or will have failed the MCAS exam, and are protected by all statutory and constitutional provisions pertinent to this action;

(c) The claims of the named plaintiffs are typical of the claims of the class;

(d) The named plaintiffs will fairly and adequately represent the interests of the class; and

(e) The defendants have acted in a manner generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

B. DEFENDANTS

STATE DEFENDANTS

Massachusetts Board of Education

55. Defendant Massachusetts Board of Education is created pursuant to M.G.L. c. 15, § 1E, and consists of the chairman of the student advisory council, the chancellor of higher education, one representative of a labor organization selected by the governor from a list of three nominees provided by the Massachusetts State Labor Council, AFL-CIO, one representative of business or industry selected by the governor with a demonstrated commitment to education and five additional members selected by the governor. The chairperson of the board is appointed by the governor.

56. The Board of Education is the chief policy-making and coordinating body of public education in Massachusetts. Its principal place of business is 350 Main Street, Malden, Massachusetts. It is comprised of nine members, who are responsible for its operation, supervision and control.

57. The Board of Education has general power to determine, adopt, and prescribe policies, rules, regulations, and standards required by law, as well as those that it deems necessary to improve the state public education system. It also is empowered to establish policies concerning the education of public school students in early childhood, elementary, secondary and vocational technical educational schools.

58. The Board of Education, in conjunction with the Commissioner of Education and the Department of Education, is responsible for (1) setting student performance standards; (2) providing guidance and resources to assist schools and districts in delivering programs and

services to enable students to meet the standards; (3) assessing the effectiveness and monitoring improvements of all public schools; and (4) intervening, when necessary, to ensure results.

59. While exercising these powers, the Board of Education has overseen the development and implementation of the MCAS exam. Moreover, it established the "cut score" or "competency determination" that students must attain on the grade 10 English Language Arts and Mathematics sections of the MCAS exam to receive a state high school diploma. It further developed and implemented policies and practices pertaining to MCAS exam remediation opportunities, retests and appeals.

60. Defendant members of the Board of Education include James A. Peyser, the Chairman of the Massachusetts Board of Education; Henry M. Thomas, III, the Vice-Chairperson of the Massachusetts Board of Education; and Board members Charles D. Baker, J. Richard Crowley, Judith I. Gill, William K. Irwin, Jr., Roberta A. Shaefer and Abigail M. Thernstrom.

The Massachusetts Department of Education

61. Pursuant to M.G.L. c. 15, § 1, the Massachusetts Department of Education is under the supervision and control of the Massachusetts Board of Education. The Department of Education is divided into organizational units including School Accountability/Targeted Assistance, Curriculum and Instruction, Educator Quality, School Finance and District Support, Student Assessment and Accountability and Special Programs and Services. The Department of Education, with the Commissioner of Education as chief executive officer, is the state education agency charged with the responsibility for assuring implementation of federal and state laws.

62. Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Equal Educational Opportunities Act,

20 U.S.C. §§ 1703(f) and 1706, the Department of Education, through its members, agents and employees, have signed assurances of non-discrimination and compliance in connection with the receipt of federal financial assistance. The Department of Education receives federal financial assistance from the United States Department of Education for educational programs including Title I of the Elementary and Secondary Education Act, and the Carl D. Perkins Vocational Education and Technology Act, 20 U.S.C. § 2301 *et seq.*

Commissioner of Education David P. Driscoll

63. Pursuant to M.G.L. c. 15, § 1F, the Board of Education, by a two-thirds vote of all its members, shall appoint a Commissioner of Education, who serves as the secretary to the board, its chief executive officer and the chief state school officer for elementary and secondary education.

64. Defendant David P. Driscoll is the current Massachusetts Commissioner of Education, and is responsible for administering the Massachusetts Department of Education ("Commissioner of Education"). Commissioner Driscoll also is the Secretary to the Massachusetts Board of Education ("Board of Education"). Commissioner Driscoll is the chief executive officer of the Board of Education, and is responsible for executing the policies adopted by the Board of Education.

65. Commissioner Driscoll has statutory responsibility for supervising and directing the execution of and compliance with laws relating to Massachusetts public schools through the Department of Education. That responsibility includes supervision and implementation of the State's (1) education accountability system established pursuant to the Massachusetts Education Reform Act of 1993, (2) bilingual education, (3) special education programs, (4) Title I schools and programs; and (5) vocational education programs. Pursuant to M.G.L. c. 15, § 1F and

M.G.L. c. 69, § 1A, Commissioner Driscoll also is responsible for assessing the effectiveness and for monitoring the improvement of the public schools in each district including charter schools.

66. Commissioner Driscoll is empowered to analyze the present and future goals, needs and requirements of public education in the Commonwealth. He has the authority to recommend to the Board of Education comprehensive means to achieve a well-coordinated system of high achievement in public education.

LOCAL DEFENDANTS

Holyoke School District

67. Defendant Holyoke School District is a public school district located in Holyoke, Massachusetts. The Department of Education, under the direction of the Commissioner, has identified multiple schools within the Holyoke School District as "in need of improvement" or "under-performing" for purposes of Title I of the Elementary and Secondary Education Act and the Massachusetts Education Reform Act.

Holyoke School Committee

68. Defendant Holyoke School Committee is the governing body of the Holyoke School District. The Holyoke School Committee is responsible for the conduct and management of educational programs within the Holyoke School District. It constitutes a local educational agency under Massachusetts Education Reform Act, Title I of the Elementary and Secondary Education Act, the Carl D. Perkins Vocational Education and Technology Assistance Act, and the Individuals with Disabilities Education Act. It also is responsible for implementing the provisions of the Massachusetts Education Reform Act and federal law in each school within the

Holyoke School District. The Holyoke School Committee is a recipient of federal financial assistance from the United States Department of Education.

69. Each school district in Massachusetts is required to file a report with the Department of Education every year that includes, but is not limited to, an outline of the curriculum and graduation requirements, pupil/teacher ratios and class size policy and practice, teacher and administrator evaluation procedures, and statistics, policies, and procedures relative to student truancy and drop-outs.

70. Defendant members of the Holyoke School Committee, who are named as defendants only in their official capacities, include Margaret M. Boulais, William Collamore, Barry D. Conway, Yvonne Garcia, Michael J. Moriarty, John C. Pietrzykowski, Mary C. Plant, Patrick Shaughnessy and Mary S. Signet.

Holyoke School District Superintendent Eduardo B. Carballo

71. Defendant Eduardo B. Carballo, who is named as a defendant only in his official capacity, is the District Superintendent of the Holyoke Public School District. He is responsible for the overall management and administration of the Holyoke School District, and the implementation and execution of policies adopted or otherwise directed by the School Committee pertaining to students, teachers and all personnel. He also is responsible for supervising and directing the execution of and compliance with laws relating to Massachusetts public schools. In addition, Superintendent Carballo is responsible for assessing the effectiveness and monitoring the improvement of the public schools in the Holyoke School District.

IV. FACTUAL ALLEGATIONS

A. KEY PROVISIONS OF THE MASSACHUSETTS EDUCATION REFORM ACT

1. **The Goal of Providing a Quality Education to All Public School Students**

72. In 1993, the Massachusetts Legislature enacted M.G.L. c. 69, § 1 *et seq.*, the Massachusetts Education Reform Act.

73. Section 1 of the statute declares that it is "a paramount goal of the commonwealth to provide a public education system of sufficient quality to extend to *all* children, including a school age child with a disability as defined in section 1 of chapter 713, the opportunity to reach their full potential and to lead lives as participants in the political and social life of the commonwealth and as contributors to its economy" (emphasis supplied).

74. The statute's "intent," which is set forth in M.G.L. c. 69, § 1, is to ensure:

(1) "that each public school classroom provides the conditions for all pupils to engage fully in learning as an inherently meaningful and enjoyable activity without threats to their sense of security or self-esteem,

(2) a consistent commitment of resources sufficient to provide a high quality public education to every child,

(3) a deliberate process for establishing and achieving specific educational performance goals for every child, and

(4) an effective mechanism for monitoring progress toward those goals and for holding educators accountable for their achievement."

2. **Statutory Requirements of "Academic Standards" and "Curriculum Frameworks"**

a. **"Academic Standards" for Core Subjects**

75. The Massachusetts Education Reform Act, M.G.L. c. 69, § 1D, further requires the Board of Education to direct the Commissioner of Education to develop "academic standards" for mathematics, science and technology, history and social studies, English, foreign languages and the arts for grades kindergarten through twelve.

76. Section 1D states that the "standards shall clearly set forth skills, competencies and knowledge" that all students are expected to possess at the conclusion of individual grades or clusters of grades. Under Section 1D, the standards also must be formulated to set high expectations of student performance, and to provide clear and specific examples that embody and reflect those expectations.

77. Section 1D mandates that the "skills, competencies and knowledge set forth in the standards must be expressed in terms that lend themselves to objective measurement, define the performance outcomes expected of both students directly entering the workforce and of students pursuing higher education."

78. Section 1D further requires that the "academic standards" shall include criteria for a "competency determination" in the core subjects, which "shall represent that determination that a particular student has demonstrated mastery of a common core of skills, competencies in these areas, as measured by assessment systems" set forth in M.G.L. c. 69, § 1I.

79. Under Section 1D, the "[a]cademic standards shall be designed to avoid perpetuating gender, cultural, ethnic or racial stereotypes," and "shall reflect sensitivity to different learning styles and impediments to learning."

b. **"Curriculum Frameworks" for Core Subjects**

80. In addition to the adoption of "academic standards," the Massachusetts Education Reform Act, M.G.L. c. 69, § 1E, requires the Board of Education to direct the Commissioner of Education to "institute a process for drawing up curriculum frameworks for the core subjects covered by the academic standards provided in section one D."

81. Under Section 1E, the "curriculum frameworks shall present broad pedagogical approaches and strategies for assisting students in the development of the skills, competencies and knowledge called for by these standards."

82. Section 1E mandates that the "curriculum frameworks" shall:

(1) "provide sufficient detail to guide and inform processes for the education, professional development, certification and evaluation of both active and aspiring teachers";

(2) "provide sufficient detail to guide the promulgation of student assessment instruments"; and

(3) "be constructed to guide and assist teachers, administrators, publishers, software developers and other interested parties in the development and selection of curricula, textbooks, technology and other instructional materials and in the design of pedagogical approaches and techniques for early childhood programs and elementary, secondary and vocational-technical schools."

83. Like the "academic standards," Section 1E requires that the "[f]rameworks shall be designed to avoid perpetuating gender, cultural, ethnic or racial stereotypes," and "shall reflect sensitivity to different learning styles and impediments to learning."

3. Adoption of the Massachusetts Comprehensive Assessment System

a. A System to Evaluate the Public Schools and Public School Districts

84. To achieve its "paramount goal" of providing a quality education to all public school students, Section 11 of the statute imposes extensive requirements on the Board of Education and the Commissioner of Education to "adopt a system," known as the Massachusetts Comprehensive Assessment System, for "evaluating on an annual basis the performance of both public school districts and individual public schools."

85. As to individual schools, Section 11 mandates that "the system *shall include instruments designed to assess the extent to which schools and districts succeed in improving or fail to improve student performance*, as defined by student acquisition of the skills, competencies and knowledge called for by the academic standards and embodied in the curriculum frameworks established by the board . . . in the areas of mathematics, science and technology, history and social science, English . . ." (emphasis supplied).

b. A System to Evaluate Student Performance

86. Section 11 of the statute further provides that the Board of Education and the Commissioner of Education adopt a "system" for evaluating student performance "designed both to measure outcomes and results regarding student performance, and to improve the effectiveness of curriculum and instruction."

c. The Use of "Criterion" Referenced "Assessment Instruments"

87. In its "design and application," Section 11 states that "the system shall strike a balance among considerations of accuracy, fairness, expense and administration," and that it "*shall employ a variety of assessment instruments* on either a comprehensive or statistically valid sampling basis" (emphasis supplied). According to Section 11, those "assessment instruments"

must be "criterion referenced" to assess whether students are meeting the requisite academic standards described by the statute. "As much as practicable," Section 1I requires that the "assessment instruments" are to "include consideration of work samples, projects and portfolios, and shall facilitate authentic and direct gauges of student performance."

88. Section 1I further mandates that the "assessment instruments shall be designed to avoid gender, cultural, ethnic or racial stereotypes and shall recognize sensitivity to different learning styles and impediments to learning," and that the "system shall take into account on a non-discriminatory basis the cultural and language diversity of students in the commonwealth and the particular circumstances of students with special needs."

89. As to the periodic assessment of student performance, Section 1I provides that "comprehensive diagnostic assessment of individual students shall be conducted at least in the fourth, eighth and tenth grades," and that the "diagnostic assessments shall identify academic achievement levels of all students in order to inform teachers, parents, administrators and the students themselves, as to individual academic performance."

d. Use of the MCAS Exam

90. Section 1I of the statute contains the only reference in the law to the "Massachusetts Comprehensive Assessment System exam". Section 1I states that "[e]ach school district in which more than 20 per cent of the students score below level two on the Massachusetts Comprehensive Assessment System exam . . . shall submit an MCAS success plan to the department."

91. The MCAS success plan must "describe the school district's strategies for helping each student to master the skills, competencies and knowledge required for the competency determination" required by M.G.L. c. 69, § 1D.

92. Under Section 11, the Department of Education shall determine the elements to be included in the success plan, which may include (1) a plan to assess each student's strengths, weaknesses and needs; (2) a plan to use summer school, after school and other additional support to provide each child with the assistance needed; (3) a plan for involving the parents of students described in the plan.

93. Section 11 further requires the Department of Education to examine each school district's success plan and determine whether it has a reasonable prospect of significantly reducing the school district's failure rate and to coordinate the oversight of the MCAS success plans with existing audit and oversight functions.

94. The State Defendants have failed to comply with these requirements to the detriment of the Plaintiff class.

4. The Board of Education's Regulation Requiring Students to Pass the MCAS Exam as a Prerequisite to Graduation

95. M.G.L. c. 69 requires that students attain a "competency determination" to graduate from high school. As stated in Paragraph 87, the law requires the Board of Education to employ "a variety of assessment instruments" that are "criterion referenced" and include "work samples, projects and portfolios" to gauge student performance and assess whether students are meeting the requisite "academic standards." The statute contains no provision requiring students to pass a single MCAS exam as a prerequisite to graduation, nor does it permit the Board of Education to unilaterally amend or ignore the mandatory requirement that it use a "variety of assessment instruments" to gauge student performance.

96. As early as 1996, before the MCAS exam was developed and before any validity studies were conducted, the Board of Education and the Commission of Education determined

that attaining a competency determination certificate would be a graduation requirement for the Class of 2003.

97. On January 25, 2000, the Board of Education promulgated regulations, 603 C.M.R. § 30.00 *et seq.*, governing the Massachusetts Comprehensive Assessment System and standards for "competency determination." The Board of Education adopted Regulation 30.03, entitled "Standards for Competency Determination." Despite the plain language of the Massachusetts Education Reform Act, Regulation 30.03 provides that "[s]tudents in the graduating class of 2003 shall meet or exceed the Needs Improvement threshold scaled score of 220 on both the English Language Arts and the Mathematics MCAS grade 10 tests in order to satisfy the requirements of the Competency Determination." In other words, if students in the Class of 2003 do not pass the MCAS exam, they will not be permitted to graduate from high school. Subsequently, the Board of Education promulgated a regulation authorizing a discretionary appeals process.

B. THE BOARD OF EDUCATION'S ADOPTION OF "ACADEMIC STANDARDS" AND "CURRICULUM FRAMEWORKS"

98. In September 1993, the Board of Education convened the Commission on the Common Core of Learning to draft broad educational goals for all students. In July 1994, the Board of Education adopted the educational goals prepared by the Commission on the Common Core of Learning.

99. In May 1994, Robert V. Antonucci, the Commissioner of Education at that time, convened "curriculum frameworks" development committees to develop statewide standards for learning for Mathematics, English, Science and Technology, History and Social Science, Foreign Languages and the Arts.

100. The "curriculum frameworks" developed were intended to provide guidance and instruction to public schools about the content, knowledge, competencies and skills all students were expected to know and be able to perform within specific time periods (*i.e.*, grades pre-kindergarten through 4, grades 5 through 8, grades 9 through 10, and grades 11 through 12).

1. Untimely Adoption of "Curriculum Frameworks" Left Insufficient Time for All Students To Learn

101. The Board of Education's implementation of the requirement that it adopt "curriculum frameworks" in specified core subjects covered by the "academic standards" set forth in M.G.L. c. 69, § 1D was delayed.

102. In December 1995, the Board of Education adopted "curriculum frameworks" in Mathematics, Science and Technology, the Arts, Health, and Foreign Languages. It was not until January 1996 that the Board of Education released those "curriculum frameworks" to the schools and the public.

103. At that time, students comprising the Massachusetts public high school Class of 2003 already were attending the second half of the *fifth* grade, and were not being taught pursuant to the newly adopted "curriculum frameworks" in Mathematics, Science and Technology, the Arts, Health and Foreign Languages.

104. The education community, including the former Chairman of the Board of Education, John R. Silber, has widely acknowledged that the education a student receives from kindergarten through grade three is critical to the student's overall development, and that if a student receives a poor or substandard education during those years, the student will be unlikely to be able to overcome that deficit by the twelfth grade.

105. In January 1997, the Board of Education ultimately adopted the English Language Arts "curriculum framework." In February 1997, the Board of Education released that "curriculum framework" to the schools and the public.

106. At that time, student members of the Class of 2003 were attending the second half of the *sixth* grade, and were not being taught the content and skills contained in the newly adopted "curriculum frameworks" in English Language Arts.

2. Revisions of the "Curriculum Frameworks" Further Delayed Their Implementation in the Public Schools

107. Although the Board of Education adopted "curriculum frameworks" in various core subjects in late 1995, early 1997 and mid-1997, the Board of Education continued to revise them, further delaying their implementation in the public schools.

108. In the spring of 1998, when student members of the Class of 2003 were in the *eighth* grade, the Board of Education initiated a process for reviewing and revising, as necessary, the "curriculum frameworks" in Mathematics, Science and Technology, the Arts, Health and Foreign Languages.

109. It was not until the 1999-2000 school year, after students already had taken the MCAS exam, that the Department of Education created an Office of Academic Affairs and Planning that was responsible for ensuring that the Massachusetts Curriculum Frameworks exemplified the highest academic standards and rigor. The Office of Academic Affairs and Planning coordinated the final revisions to the drafts of the "curriculum frameworks" submitted by the *Mathematics* and Science Panels, and coordinated revisions to the *English Language Arts* "curriculum framework" that ultimately was released in June 2001.

110. Public school teachers received limited notice and opportunity to learn and to modify teaching and instructional content. Throughout 1999, the Department of Education met with a variety of focus groups, solicited public comment and met with "Review Panels" appointed by the Commissioner of Education to review the "curriculum frameworks" and recommend revisions to them.

111. The State Defendants oversaw the development of the *Guide to the MCAS: Mathematics* and the *Guide to the MCAS: English Language Arts*, which were published in January and February 1998, respectively. These so-called "Bridge" documents informed public school teachers what material would be on the MCAS exam beginning in spring 1998. Subsequently, the State Defendants did not update the "Bridge" documents to reflect revisions in the "curriculum frameworks."

3. Additional Delay in Implementation of the Mathematics "Curriculum Framework" Due to Protracted Revisions Resulted in Students Not Being Taught the Material On The MCAS Exam

112. The "curriculum framework" for Mathematics was the subject of extensive revision. On September 28, 1999, the Board of Education requested public comment on a proposed revision of the Mathematics "curriculum framework." On the same day, during a presentation of the newly revised math frameworks, the Board of Education was told about future difficulties for teachers and students in overcoming the lasting impact of cumulative deficits, particularly in mathematics. The Board of Education was also informed about (1) the high level of interest among national associations and mathematicians with the evolution of abstract reasoning related to algebra and geometry, (2) the longstanding concerns about the great difficulty students experience in beginning the study of algebra in the eighth or ninth grade, and

(3) the belief that this difficulty evolved from students' lack of understanding of some key ideas of algebra, which easily could be ameliorated early in a child's educational career.

113. On February 23, 2000, the Board of Education voted conditionally to endorse the revised Mathematics "curriculum framework" and to engage in a further review process.

114. The Department of Education continued to modify and revise the Mathematics "curriculum framework" based on recommendations from the National Council of Teachers of Mathematics. The Board of Education did not release the revised Mathematics "curriculum framework" to the schools and the public until November 2000.

115. At that time, the members of the Class of 2003 were attending the *ninth* grade, and were not being taught the content and skills contained in the revised Mathematics "curriculum framework."

4. Inadequate Time for Teachers to Align Class Curriculum with the "Curriculum Frameworks" and for students to Attain Expected Performance Levels

116. Due to the extensive modification and revision of the "curriculum frameworks" in English Language Arts and Mathematics, the State Defendants failed to provide public school teachers with sufficient time to (1) gain sufficient knowledge and familiarity with the "academic standards" reflected in the "curriculum frameworks," (2) align their curricula with the "academic standards," (3) acquire necessary instructional materials and textbooks, and (4) teach the students the content that they were expected to know and the skills that they were expected to perform.

117. In May 1998, students enrolled in Massachusetts' public school grades 4, 8, and 10 took the MCAS exam for the first time. The initial version of the English Language Arts "curriculum framework" had just recently been adopted by the Board of Education in the fall of 1997, and later was revised. In 1998, the Mathematics "curriculum framework" was undergoing

review and was in the process of being modified based on the recommendations of the National Council of Teachers of Mathematics.

118. The plaintiffs and the members of the proposed class and subclasses received inadequate notice of the content, knowledge and performance skills assessed by the MCAS exam, and were not taught the material on the MCAS exam.

C. THE DEFENDANTS' FAILURE TO ENSURE ADEQUATE CURRICULUM AND INSTRUCTION FOR ALL PUBLIC SCHOOL STUDENTS

1. The State Defendants' Failure to Fulfill Their Duty to Oversee and Implement the MCAS Exam

119. M.G.L. c. 69, §§ 1B and 1I require the State Defendants to (1) provide technical assistance and support to public schools and school districts to help their students meet their established goals; (2) improve the effectiveness of teaching and learning through the MCAS exam; and (3) intervene, when necessary, to obtain the desired outcomes.

120. The State Defendants, in derogation of their responsibilities under M.G.L. c. 69, § 1I, have failed to fulfill their duties of overseeing the administration of the MCAS exam, and ensuring that there is adequate curriculum and instruction for all public school students.

a. **The State Defendants' Failure to Ensure that Public School Teachers Teach All Students to Meet the "Academic Standards" in the "Curriculum Frameworks"**

121. Under M.G.L. c. 69, § 1E, the "curriculum frameworks" for each core subject establish content standards on which public school curriculum and instruction provided to students must be based.

122. Since the adoption of the "curriculum frameworks," the State Defendants have failed to take adequate steps to ensure that the school districts teach all students to meet the standards in the "curriculum frameworks."

123. The State Defendants also have failed to ensure that the 71,900 teachers teaching in the 1,875 public schools of the 371 school districts in the Commonwealth have sufficient knowledge, skills, authority, and means to effectively align the curriculum being taught in their respective schools and classrooms to the "curriculum frameworks" for Mathematics and English Language Arts.

124. The State and Local Defendants collectively have failed to ensure that the plaintiffs and the class and subclasses that they propose to represent have been actually taught the material on which they are being assessed by the MCAS exam.

125. For students to attain high academic achievement, they must be taught by teachers who are knowledgeable about the content areas that they teach. The academic foundation of public school teachers in their disciplines is an indicator of such knowledge. "Out-of-field" teaching occurs when educators do not have a major or an appropriate certification in the content areas that they teach.

126. Since the enactment of the Massachusetts Education Reform Act in 1993, in several public schools with high minority student enrollments, there has been a disproportionate rate of secondary core academic subjects being taught by teachers teaching "out-of-field."

127. In 1993-1994, the Education Trust reported that schools with low minority student enrollment had 15% of secondary classes taught by teachers lacking a minor in the field in which they taught, whereas schools with high minority student enrollment had 20% of secondary classes taught by teachers teaching "out-of-field." Subsequently, in 1999-2000, it was reported that while schools with low minority student enrollment had just 15% of core secondary classes taught by teachers teaching out-of-field, schools with high minority student enrollment had a staggering 32% of core secondary core academic classes taught by teachers lacking at least a minor in the content area.

b. <u>The State Defendants' Failure to Ensure That All Students Are Provided Adequate Education</u>

128. In addition to using the MCAS exam to evaluate students, the State Defendants are required by law to establish a system for using MCAS exam scores to evaluate schools.

129. Stage One of the school performance assessment under the Massachusetts School and District Accountability System is known as the School Performance Rating Process ("SPRP"). Schools performing in the lowest SPRP categories that show little improvement trend are candidates to be evaluated during Stage Two panel reviews. Factors other than MCAS exam results, such as attendance and dropout rates, may be considered in the selection of schools to be referred for panel review.

130. All schools performing in the lowest SPRP categories are candidates for panel review, but schools with the lowest MCAS exam overall scaled score have top priority. In 2001,

the State Defendants identified 259 public schools as "low performing" or "under-performing." In 2001 to 2002, the State Defendants conducted only twelve (12) panel reviews due to limited capacity.

131. Plaintiffs and members of the class and subclasses they represent who attend or have attended "low-performing" or "under-performing" schools since elementary school are being held accountable in grade 10 and thereafter for the cumulative deficits in their education.

132. In the twenty-one (21) high schools receiving the worst scores on the SPRP, 2,815 students failed the grade 10 English Language Arts section of the MCAS exam, and 3,308 students failed the grade 10 Mathematics section of the MCAS exam.

133. The Plaintiffs and members of the class and subclasses who attend schools identified as "low-performing" or "under-performing" have been denied their right to a quality education consistent with the Massachusetts Education Reform Act, Title I of the Elementary and Secondary Education Act, 20 U.S.C. § 6301 *et seq.*, and the Carl D. Perkins Vocational Education and Applied Technology Act, 20 U.S.C. § 2301 *et seq.*, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, Section 504, and M.G.L. c. 71B. These students were not provided an enriched educational curriculum, timely and effective interventions with individualized assistance, as necessary, and highly qualified teachers so as to have been taught what all students are expected to learn.

134. The Department of Education lacks the capacity to implement effectively the Massachusetts Education Reform Act's public school accountability system and lacks the capacity to ensure that school districts provide effective teaching and learning.

135. It was not until spring 2001, following the administration of the 10th grade MCAS exam to the Class of 2003, that the Department of Education created the Education Management

Audit Council to take charge of the "accountability" function of education reform to assist "under-performing" schools.

c. The State Defendants' Failure to Provide Effective Instructional Programs to Students with Limited English Proficiency

136. Under the Board of Education's regulations, students with limited English proficiency ("LEP") must pass the MCAS exam as a graduation requirement.

137. A LEP student is one whose first language is a language other than English and who is unable to perform ordinary classroom work in English.

138. LEP students must take the MCAS exam in English if they meet either of two criteria: (1) the student is recommended for regular education the following school year or (2) the student has been enrolled in school in the United States for more than three years. If the student does not meet either criterion and is able to read and write at or near grade level in Spanish, the student is eligible to take the Spanish/English MCAS exam in mathematics and science, but not language arts. These students must pass the grade 10 English Language Arts section of the MCAS exam in English to be eligible for a high school diploma. LEP students whose native tongue is not Spanish must take the MCAS exam in English after they have been enrolled for three years in schools in the United States.

139. Under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1703 and §1706 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, students from different language backgrounds with limited ability to write, read, or speak English have the right to an educational program effectively designed to overcome these language barriers so that they can meet the same standards expected for all students.

140. The MCAS exam has not been validated for students with limited English proficiency.

141. The State Defendants' use of an English Language Arts test to assess students with limited English proficiency is improper since that test assumes students are fluent in English or have been educated in the United States since kindergarten.

142. A significant percentage of students with limited English proficiency, eighty-four percent (84%), have failed the MCAS exam.

143. Despite that high failure rate, the State and Local School Defendants have not (1) adequately assessed the effectiveness of the instructional programs used to teach students with limited English proficiency; (2) ensured that they are being taught by qualified bilingual and English as a Second Language teachers; (3) provided technical assistance and support to public schools and school districts to help students with limited English proficiency to meet their established goals; and (4) intervened to obtain the desired outcomes.

d. The State and Local Defendants' Failure to Provide Effective Instructional Programs to Students with Disabilities

144. Under federal and state laws, students with disabilities have the right to receive an appropriate education, related services, as needed, and reasonable accommodations to enable them to participate in the regular/general curriculum and to meet the same standards expected for all students. 20 U.S.C. §§ 1412(a)(1)(A), 1412(a)(5)(A), 1412(a)(16); 29 U.S.C. § 794 and 34 C.F.R. §§ 104.4 and 104.33; and M.G.L. c. 71B, 603 C.M.R. §§ 28.02(18), 28.03 and 28.05.

145. Pursuant to federal and state special education laws, each public school student with a disability is entitled to receive specialized instruction through a written individualized education program (IEP) designed to address his/her unique disability related educational needs.

The IEP must describe how the student's disability related educational needs will be addressed so that such needs do not pose a barrier to reaching the standards expected for all children. 20 U.S.C. § 1414(d); M.G.L. c. 71B; 603 CMR § 28.05 (4)(a), (b). An IEP that assumes lower goals and does not focus on these standards generally is not legal. 29 U.S.C. § 794; 34 C.F.R. § 104.4. The assignment of students with disabilities to a regular education program that does not teach to the standards established for all students generally is not legal. 20 U.S.C. § 1412(a)(5)(A); 20 U.S.C. § 1412(a)(16); 29 U.S.C. § 794; 34 C.F.R. § 104.4; 603 CMR §§ 28.05(4), 28.02(18).

146. Students with disabilities must pass the grade 10 English Language Arts and Mathematics sections of the MCAS exam as a graduation requirement. They may do so with certain testing accommodations if necessary and within the test's guidelines. If a student's disability prevents the student from taking the MCAS exam, even with accommodations, the student's Instructional Education Program (IEP) or Section 504 Team must ensure that the student participates in the State's alternate assessment. The alternate assessment to the MCAS exam is a portfolio that measures a student's knowledge of the content standards and may include work samples, instructional data, videotapes, or any other information linked to instruction in the subject being assessed. Alternate assessments are scored by Massachusetts educators at week-long scoring institutes.

147. The MCAS exam has never been validated for students with disabilities.

148. As of December 2001, a high percentage of students with disabilities, fifty-five percent (55%), in the Class of 2003 have failed the MCAS exam.

149. The last three monitoring reports issued by the Office of Special Education Programming of the U.S. Department of Education state that the State Defendants and the

individual schools and school districts that it monitored, including the Holyoke School District, failed to teach students with disabilities the content, knowledge and skills necessary to meet the Commonwealth's high standards.

150. The latest report, which was issued in October 1997, acknowledged the poor performance of students with disabilities on the MCAS exam, and identified several areas of non-compliance including: (1) children with disabilities placed in substantially separate educational environments did not have opportunities for participation with non-disabled children in nonacademic and extracurricular activities and to be involved and progress in the general education program; (2) the lack of opportunity for children with disabilities in regular vocational education programs with appropriate supports; (3) the Massachusetts Department of Education did not have effective methods for identifying and correcting deficiencies in programs providing services to children with disabilities.

151. Despite the unacceptably high failure rate (55%), the State and Local School Defendants have not, as required by federal and state laws, (1) adequately assessed the effectiveness of the instructional programs used to teach students with disabilities; (2) ensured that they are being taught by "qualified" teachers; (3) provided technical assistance and support to public schools and school districts to help students with disabilities to meet their established goals; and (4) intervened to obtain the desired outcomes.

e. <u>The Defendants' Failure to Provide Effective Instruction and Support to Students Enrolled in Vocational Education Schools</u>

152. Students enrolled in vocational education schools must pass the MCAS exam as a graduation requirement.

153. By accepting funds under the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. § 2301 *et seq.* (the "Perkins Act"), the State and Local Defendants promised to ensure that students have access to quality programming and support services to help them to succeed. The Perkins Act ensures "quality" through its mandate that programs: (1) provide students with strong experience in the understanding of all the aspects of the industry that they are preparing to enter; and (2) integrate both basic and advanced academics and problem-solving skills. Vocational education programs must provide support services for students who need specific assistance in order to participate and succeed in quality programs.

154. Students enrolled in vocational education schools who are members of special populations must, by law, be provided special attention in addressing specific needs. Those students include low-achieving students, students with limited English proficiency, students with disabilities, students from low-income families, or students participating in a program designed to eliminate sex bias (trying to enter a field not traditionally identified with her/his sex).

155. The State and Local Defendants have given inadequate attention to ensure that students attending vocational education schools, including those who may be participating in occupationally specific courses of study, are provided the content, knowledge and skills they need to attain the standards established by the State Defendants and embodied in the "curriculum frameworks."

156. The State Defendants have provided inadequate management, supervision, and monitoring and oversight of vocational education programs.

157. The Local Defendants have failed to ensure that all members of the class enrolled in vocational education schools, including students who are members of special populations, receive the kind of additional services and supports they need to address their limited English

proficiency, other language based needs, disability related educational needs or other needs, or needs related to their educational deficiencies. Such services include qualified teachers, curriculum modification, equipment modification, classroom modification, supportive personnel, instructional aids and devices, counseling and support and English-language instruction.

158. A significant percentage of students in the Class of 2003 who are enrolled in vocational technical high schools have failed the MCAS exam. Many of these students are members of special populations.

159. Despite that high failure rate, the State and Local Defendants have not (1) adequately assessed the effectiveness of the instructional programs used to teach students in the vocational education programs; (2) ensured that they are being taught by qualified teachers; (3) provided technical assistance and support to public school districts and individual schools to help identify barriers that are resulting in lower rates of success, including on the MCAS exam, and limiting students who are attending these schools from meeting their established goals; and (4) intervened to obtain the desired outcomes by remedying difficulties in implementation of quality programming.

D. THE STATE DEFENDANTS' FAILURE TO DEVELOP AN MCAS EXAM THAT COMPLIES WITH THE MASSACHUSETTS EDUCATION REFORM ACT

160. The State Defendants, who were responsible for the development and design of the MCAS exam, were required to ensure that the MCAS exam complied with all aspects of the Massachusetts Education Reform Act.

161. The MCAS exam, as developed, designed and implemented by the State Defendants, violates several provisions of the Massachusetts Education Reform Act that expressly govern the design of the exam.

162. M.G.L. c. 69, § 1I required the State Defendants to "employ a variety of assessment instruments" to measure the performance and competency of public school students. Instead of complying with this mandate, the State Defendants adopted the use of a single assessment instrument, the MCAS exam, to determine whether public school students satisfy the "competency requirement."

163. M.G.L. c. 69, § 1I required the State Defendants to utilize assessment instruments that are *"criterion referenced"* to assess "whether students are meeting the academic standards" described in Chapter 69.

164. A "criterion-referenced" test measures the extent to which students have mastered specific knowledge and skills, as opposed to a "norm-referenced" test, which measured how students performed in relation to other students who took the test.

165. The MCAS exam, as developed and implemented in practice, is a "norm-referenced" test, rather than a "criterion-referenced" test.

166. The State Defendants, in developing and designing the MCAS exam, intentionally rejected questions used during the field-testing of the MCAS exam if large numbers of the students correctly answered the question. The State Defendants' question selection process thus was based, in part, on comparing the results of test-takers to each other (i.e., norm referenced), as opposed to selecting questions based on the specific knowledge and skills that they were expected to know.

167. M.G.L. c. 69, § 1I also requires the State Defendants to utilize assessment instruments that "include consideration of work samples, projects and portfolios, and facilitate authentic and direct gauges of student performance." The MCAS exam, a single assessment instrument, does not include consideration of student "work samples, projects and portfolios," and thereby does not satisfy the statutory requirement that the exam "facilitate authentic and direct gauges of student performance."

168. M.G.L. c. 69, § 1I further mandates that the "assessment instruments shall be designed to avoid gender, cultural, ethnic or racial stereotypes and shall recognize sensitivity to different learning styles and impediments to learning." M.G.L. c. 69, § 1I also provides that the "system shall take into account on a non-discriminatory basis the cultural and language diversity of students in the commonwealth and the particular circumstances of students with special needs."

169. As developed and designed, the MCAS exam discriminates against students based on cultural, ethnic, racial and language diversity as well as disability in violation of M.G.L. c. 69, § 1I.

E. THE STATE DEFENDANTS' FAILURE TO DEVELOP AN EXAM THAT MEETS RECOGNIZED STANDARDS FOR TEST VALIDITY, RELIABILITY AND FAIRNESS

1. Standards for Assuring Test "Validity," "Reliability" and "Fairness"

170. As developers of a "high stakes" educational exam, the State Defendants were required to ensure the design of a "valid," "reliable," and "fair" exam for all students pursuant to recognized standards for educational testing.

171. The *Standards for Educational and Psychological Testing* (the *"Test Standards"*), which were prepared by a joint committee of the American Psychological Association, the American Educational Research Associations and the National Council on Measurement in Education, are widely recognized and judicially accepted. The *Test Standards* indicate that a "high stakes" educational exam, such as the MCAS exam, must be "valid," "reliable," and "fair."

172. Under the *Test Standards*, exam "validity," a key consideration in test evaluation, refers to the appropriateness, meaningfulness, and usefulness of the specific inferences made from test scores. Test validation is the process of accumulating evidence to support the inferences made from test scores.

173. Under the *Test Standards*, exam "fairness" refers to a test that yields score interpretations that are valid and reliable for all groups of students who take the tests. A "fair" test measures the same academic knowledge and skills for all groups of students, regardless of race, national origin or disability.

174. If the answers to trial test questions show different results by relevant subgroups, appropriate studies should be conducted to detect and eliminate any bias in questions due to test design, content and format.

2. The State Defendants' Knowledge that Use of the MCAS Exam as a Graduation Requirement Would Have a Disparate, Adverse Impact on the Subclasses

175. As early as 1996, before the MCAS exam was developed and before any validity studies of the MCAS exam were conducted, the Board of Education and the Commissioner determined that students in the Class of 2003 would be the first class required to attain a "competency determination" certificate as a graduation requirement.

176. The MCAS exam, as developed, designed and implemented by the State Defendants, is an "invalid" and "unfair" exam.

177. The MCAS exam was destined to be an invalid and unfair test from the outset because the exam development process was materially flawed throughout all phases.

178. A key flaw in the exam development process concerned the State Defendants failure to conduct appropriate studies and to revise the MCAS exam after they learned from the pilot tests and two exam validity studies that the exam had an adverse, disparate impact on Black/African-American students, Hispanic students and students with limited English proficiency and students with disabilities.

a. Pilot Testing of the MCAS Exam

179. In 1997, the State Defendants engaged in pilot testing of the MCAS exam by administering the test to all public school students in certain grades in Mathematics, Science and Technology, and to a sample of students in certain grades in English Language arts, History and Social Studies. The State Defendants utilized the pilot tests to analyze newly developed questions for possible inclusion in the actual MCAS exam scheduled to be administered in the spring of 1998. No student, school, district or state results were generated based on these pilot tests.

180. The results of the pilot tests revealed a substantial disparity between the scores of white students when compared to the scores of Black/African-American students, Hispanic students, students with limited English proficiency and students with disabilities.

b. MCAS Exam Validity Studies

181. Shortly after completing the 1997 pilot testing, the State Defendants commissioned two validity studies in 1998 on the MCAS exam. The studies were to analyze the association between results on selected MCAS exams with results on common commercial tests.

182. The studies focused on the test performance of students in two Massachusetts school districts in which the students took either of two commercial, standardized tests (the Stanford Achievement Test 9 or the Metropolitan Achievement Test, 7th revision) as well as the pilot MCAS exam.

183. The 1998 studies concluded that the differences between the scores of Black/African-American students, white students and Hispanic students on all three tests were larger on the MCAS exam than on the other exams and consistent across content and grade levels. The studies noted that the differences in test results based on race and ethnicity could be the result of different learning opportunities.

184. The two studies found that a student's MCAS exam performance positively related to the student's opportunities to learn. They also underscored the importance of improved curriculum alignment to the "curriculum frameworks," state monitoring and school improvement.

185. The studies further determined that students' course selection patterns were related to their performances on the 8th and 10th grade Mathematics sections of the MCAS exam.

The studies concluded that 4th grade students' performances related to their estimates of class time devoted to studying particular topics.

186. The studies, which were based on a limited number of school districts, specifically warned the Department of Education of the need to conduct a statewide analysis of differences in access to curriculum by race "to ensure the validity, reliability, utility and fairness of MCAS."

3. The State Defendants' Failure to Conduct Further Validity Studies to Ensure that the MCAS Exam Was Valid, Fair and Non-Discriminatory for All Students

187. Given the disparate, adverse impact of the proposed MCAS exam on racial and ethnic groups of students, as evidenced by the pilot tests and at least two validity studies, the State Defendants had a mandate to conduct further inquiry about the planned use of the MCAS exam based on M.G.L. c. 69, § 1I and the *Test Standards* reflecting professionally recognized standards in the field of educational assessment.

188. The disparate results on the basis of race and ethnicity required the State Defendants to examine whether low test scores reflected the protected population's lack of knowledge and understanding after they had been taught the material on which they were tested or the failure of the public schools to have taught these students the information and skills on which they were tested.

189. The State Defendants failed to conduct the recommended statewide analysis. They also failed to take steps to ensure that local school districts and individual schools had the capacity to, and did, in fact, align the curriculum with the learning standards. In addition, they failed to take steps to ensure that school districts and schools had actually taught all students what they need to know to be able to meet those standards.

190. The flaws in the State Defendants' development of the MCAS exam render it an invalid and unfair test for a multitude of public school students comprising the various subclasses.

F. THE STATE DEFENDANTS' IMPROPER CONSIDERATION OF RACE AND ETHNICITY IN DEVELOPING AND IMPLEMENTING THE MCAS EXAM

1. The State Defendants' Abdication of Their Responsibility to Improve Inferior School Districts and Schools with High Enrollments of Minority Students

191. Under M.G.L. c. 69, § 1, a paramount goal of the Commonwealth is to provide a quality public education system to all children so that they will have the opportunity to reach their full potential.

192. To achieve the paramount goal and statutory intent of the Massachusetts Education Reform Act, the State Defendants were empowered to adopt a system, the MCAS, to evaluate the performance of public school districts and schools on an annual basis. The MCAS was designed to assess the extent to which schools and districts succeeded in improving or failing to improve student performance.

193. The State Defendants knew that numerous schools in the Commonwealth had large populations of racial, ethnic and national origin minority students, and that those schools were (1) failing as educational institutions, (2) providing unequal and inferior education, and (3) in great need of improvement.

194. The State Defendants knew that it would require the expenditure of tremendous fiscal resources and technical assistance over a period of years before those schools would be able to provide an education to their students that was commensurate with that prescribed by the Massachusetts Education Reform Act.

195. The State Defendants failed to commit sufficient resources to those schools to enable them to provide a high quality public education to their students, and/or hold schools accountable for providing timely, effective interventions for students who were not successfully learning what they were expected to know and be able to do.

2. The State Defendants' Use of a High Stakes Exam to Cause Significant Numbers of Racial and Ethnic Minority Students to Fail and Leave School

196. The State Defendants instead opted to develop and design a "high-stakes" exam for all public school students that would cause significant numbers of racial and ethnic minority students to fail and leave school.

197. To achieve that end, the State Defendants developed a "norm-referenced" exam, as opposed to a "criterion-referenced" exam required by law, and intentionally discarded exam questions that racial and ethnic minority students answered correctly during the pilot tests.

198. State Defendants intentionally adopted a "cut score" that they knew, based on the pilot testing of the exam, would constructively exclude large numbers of racial and ethnic minority students from passing the exam.

199. To receive a high school diploma, a student must meet the "competency determination" under M.G.L. c. 69, § 1D, in addition to local high school curriculum and attendance requirements.

200. The "competency determination" shall be "based on the academic standards and curriculum frameworks for tenth graders in the areas of mathematics, science and technology, history and social science, foreign languages, and English, and shall represent a determination that a particular student has demonstrated mastery of a common core of skills, competencies and knowledge in these areas, as measured by the assessment instruments." M.G.L. c. 69, § 1D.

201. To measure students' performance levels, the Board of Education adopted performance standards to demarcate four different levels of student performance on the MCAS exam, namely "Failing," "Needs Improvement," "Proficient," and "Advanced."

202. Under the regulation promulgated by the Board of Education, 603 C.M.R. § 30.03, students must meet or exceed the "Needs Improvement" threshold scaled score of 220 on both the English Language Arts and Mathematics sections of the MCAS exam to attain the statutorily required "Competency Determination."

203. Based on the results of the pilot MCAS exams administered in 1998 and 1999, in which ninety-five percent (95%) to ninety-seven percent (97.4%) of all students in grades 4, 8, and 10 participated, the Board of Education knew that two to three times as many members of plaintiffs' subclasses – namely Black/African-American students, Hispanic students, students with limited English proficiency and students with disabilities – had failed to meet the passing "cut score" compared to their white, non-disabled peers.

204. Since the Board of Education uses a "cut score" to assess student performance on a continuum of levels (*e.g.*, "Failing," "Needs Improvement," "Proficient," "Advanced"), the "cut score" should be an equally valid indicator of desired level of proficiency for all plaintiffs.

205. In 1998, forty-nine percent (49%) of Black/African-American students and fifty-eight percent (58%) of Hispanic students – compared to nineteen percent (19%) of white students – failed to meet the "cut score" of 220 on the English Language Arts section of the pilot MCAS exam. Almost twice as many Black/African-American students and Hispanic students failed to meet the "cut score" of 220 on the Mathematics section of the pilot MCAS exam as compared to forty-three percent (43%) of white students. The results were significantly worse for students with limited English proficiency and students with disabilities.

206. The Chairman of the Board of Education and the Commissioner of Education recognized that the standards contained in the "curriculum frameworks" are cumulative from kindergarten through grade 12.

207. On January 25, 2000, the Board of Education determined that a scaled score of 220 would be the "competency determination" that each student must attain in the Mathematics and English Language Arts sections of the MCAS exam to be eligible for a high school diploma in 2003.

208. The Board of Education subsequently promulgated the "competency determination" as a regulation at 603 C.M.R. § 30.00, which further stated that "[t]he Board intends to raise the threshold scaled score required for the Competency Determination in future years."

209. The State Defendants lacked evidence that the four student performance levels ("Advanced," "Proficient," "Needs Improvement, and "Failing") accurately distinguish students' work based on test scores. The State Defendants further failed to differentially validate the four student performance levels with respect to Black/African-American students, Hispanic students, students with limited English proficiency and students with disabilities.

210. Since the results of the "cut score" setting process have highly significant consequences to plaintiffs, the class and subclasses, the State Defendants, under the *Test Standards*, had an obligation to ensure that the process was clearly documented and defensible.

211. Validity evidence – if it existed – would demonstrate that students scoring above the "cut score" represent or demonstrate a qualitatively greater degree or different type of skills and knowledge than those scoring below the "cut score."

212. In "high stakes" exams, it is important to examine the validity of the inferences that underlie the specific decisions being made on the basis of the cut scores. What must be validated is the specific use of the test based on how the scores of students above and below the "cut score" are being interpreted.

213. The State Defendants effectively used the MCAS exam to cause Black/African-American students and Hispanic students to drop out of school, thereby elevating the overall MCAS exam pass rate among the remaining members of the Class of 2003.

214. The State Defendants never validated the "cut score" of 220 to ensure that the work of students scoring 220 or above was distinguishable from the work of students scoring just below 220, including the work of students whose scores fell within the band of scores represented by the standard error of measurement.

215. According to *Test Standards*, no justifiable inference can be drawn from one point measured by a single, standardized test to distinguish those who possess the mandated knowledge and skills from those who do not.

G. THE STATE DEFENDANTS' FAILURE TO PROVIDE TIMELY AND EFFECTIVE REMEDIATION

216. The Department of Education and individual school and school districts are responsible for remediation programs aimed at preparing students who have failed for future administrations of the MCAS exam. These programs have been insufficient to assure equal educational access and opportunity to all members of the class of 2003.

217. The May 2001 MCAS exam scaled results were not announced to school districts until October 2001, only six weeks before administration of the December 2001 retest.

Consequently, those students who had the most to gain were unable to participate in any remediation options.

218. The consequences of students failing the MCAS exam are significant and far-reaching. Failing students will be denied a high school diploma, which is a key to attaining most post-secondary educational and employment opportunities, chances for scholarship, higher wages, and personal fulfillment. Failing students will be stigmatized and branded as "failures" and people with low intellectual capacity.

219. The State Defendants require all students to pass the MCAS exam as a graduation requirement, and bar alternative measures of assessment, such as performance assessments or portfolios (except for certain students with disabilities who cannot take the MCAS exam even with accommodation) from being used by students who might otherwise demonstrate that they have, in fact, mastered the content, knowledge and skills expected of them. The latter consequently are inappropriately identified as not having mastered the level of knowledge and skills required to attain a 220 score, and are in jeopardy of being deprived of their high school diploma.

220. A significant percent of the original members of the Class of 2003 are expected to drop-out of school before their anticipated graduation date.

221. The State Defendants' failure to announce MCAS exam results to schools and districts in a timely manner limited the usefulness of the MCAS exam results for improving teaching and learning.

222. The Department of Education's Assessment Division lacks the capacity to provide adequate support for assisting local educators to interpret the MCAS exam results and alter their teaching and instructional strategies to help students learn in classrooms throughout the state.

H. HOLYOKE STUDENTS' FAILURE OF THE MCAS EXAM

223. The Holyoke School Committee is responsible for the conduct and management of educational programs within the Holyoke School District, a local educational agency. The Holyoke School Committee and its District Superintendent of Schools are responsible for complying with applicable federal and civil rights laws in each school within the Holyoke School District. The Holyoke School District is a recipient of federal financial assistance from the U. S. Department of Education.

224. In 2001, nearly half, forty-eight percent (48%), of the students at Holyoke High School and eighty-two percent (82%) of the students at Dean Vocational Tech who took the Mathematics section of the MCAS exam received a failing grade.

225. A foundation budget is the target level of spending designed to ensure a quality level of education in each school district. An audit conducted by the Massachusetts Department of Revenue of the Holyoke Public Schools in December 2000 found that in no fiscal year from fiscal year 1994, when members of the class of 2003 were in third grade, to fiscal year 1999, when class members were in eighth grade, did the Holyoke Public School District reach the foundation budget for any category of school spending save for books and equipment.

226. During the same time period the local share of spending on education in the Holyoke Public Schools decreased although state aid increased.

227. Implementation of the original state "curriculum frameworks" in Holyoke began, at the earliest, in fiscal year 1996-1997 in Mathematics and in fiscal year 1998-1999 in English Language Arts.

228. The Holyoke Public Schools have, for many years, failed to implement programs to lower a student dropout rate that is significantly higher than the state average student dropout

rate. With the advent of the MCAS exam graduation requirement, this problem has reached enormous proportions.

229. The Massachusetts Department of Education has indicated that there were 688 ninth grade students enrolled in the Holyoke schools on October 1, 1999. One year later, when the first mandatory 10th grade MCAS exam was administered, there were only 534 students, a loss of 22.4% from the Class of 2003. A year later, the year of the first MCAS exam re-test, there were only 402 eleventh grade students. Thus, 41.6% of the Holyoke Public Schools Class of 2003 "disappeared" between the 9th and the 11th grades. This rising high school attrition rate in Holyoke represents nearly a forty percent (40%) increase, since the Class of 2000 which did not have to pass the MCAS exam as a graduation requirement.

230. This data, by race and school, indicates that the attrition rate for the Holyoke High School Class of 2003 from grades 9 through 11 was 53.6% for Hispanic students and 11.6% for white students. At Dean Vocational High School, the comparable attrition rate was 51.9% for Hispanic students and 42.9% for white students.

231. The duties of the Local Defendants include both determining how local, state and federal educational appropriations are spent in the Holyoke Public Schools and also deciding on high school graduation policies.

232. During the early elementary years of the Class of 2003, budget cuts in Holyoke resulted in massive staff reductions and thus, class sizes that reached up to and exceeded thirty-five (35) students per teacher. This was not the first time that the Holyoke Public School system was in crisis, or the first time that the impact of budget cuts fell disproportionately upon Hispanic students. Several years earlier, in *Vecinos de Barrio Uno v. City of Holyoke*, 880 F. Supp. 911 (D. Mass. 1995), the United States District Court for the District of Massachusetts concluded that

as a result of the fiscal crisis in 1991, bilingual educational programs suffered and the Hispanic student drop-out rate rose.

233. Particularly severe staff reductions among English as a second language ("ESL") and bilingual education teachers resulted in the denial of even basic minimum education to limited English proficient students who were thereby delayed in English language and content development in their formative years.

234. Students with disabilities attending the Holyoke Public Schools have, for years, faced delays in evaluation and placement, limited access to regular education classes and to classes with content standards equal to that of other non-disabled students.

235. As a result of the Holyoke and State Defendants' actions, Holyoke Public School students/class members have been denied the opportunity to receive an education that would prepare them for the MCAS exam as evidenced by their high MCAS exam failure rates.

V. LEGAL CLAIMS

COUNT 1

(Violation of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution Against All Defendants)

236. The plaintiffs, on behalf of themselves and the class that they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 235 of this complaint.

237. The Fourteenth Amendment of the United States Constitution provides the "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

238. A public school student's right to receive an adequate education under the Education Clause of the Massachusetts Constitution creates an expectation that the student will receive, among its benefits, adequate teaching and instruction that will enable the student to

obtain the knowledge and skills assessed by the MCAS exam with the expectation of a high school diploma upon completion of the required course of instruction.

239. As public school students, the plaintiffs and the class they seek to represent have a property interest and a liberty interest in receiving a high school diploma.

A. Substantive Due Process Violations

240. The State and Local Defendants have arbitrarily deprived the plaintiffs and the class they seek to represent of their liberty and property interests in receiving a high school diploma without adequate justification.

241. The State Defendants failed to validate the MCAS exam for the multiple purposes for which it is being used including (1) the identification of students who purportedly have not mastered the body of knowledge and skills being assessed and (2) the identification of "under-performing schools" that have failed to teach all students adequately and effectively.

242. The MCAS exam, as developed, implemented and used, fails to meet professional testing standards of validity, reliability and fairness.

243. The State Defendants arbitrarily adopted a "cut score" for the MCAS exam. They had insufficient evidence and proof that any student who failed to attain the "cut score" on the MCAS exam lacked the knowledge and skills required for post-secondary education and employment requiring a high school diploma.

244. The State Defendants formulated, approved and implemented the MCAS exam with insufficient evidence and proof that students' results on the MCAS exam can validly predict post-secondary success.

245. The State Defendants had failed to demonstrate with adequate evidence and proof that the MCAS exam is a valid assessment instrument of the learning standards contained in the "curriculum frameworks" for English Language Arts and Mathematics.

246. The State Defendants failed to ensure that the MCAS exam has differential validity with respect to each of the above paragraphs with respect to the subclasses of students based on race, ethnicity, limited English proficiency and disability.

247. The State and Local Defendants failed to ensure that the inferences being drawn from students' MCAS exam scores are valid, reliable, and fair.

248. The State and Local Defendants also failed to ensure that all students have been provided an adequate opportunity to learn and actually received effective instruction enabling them to master the material and skills being assessed on the MCAS exam and to attain the "cut score."

249. The plaintiffs and the members of the class they seek to represent were denied adequate opportunity to learn the content, material and skills embodied in the English Language Arts and Mathematics "curriculum frameworks" because (1) the "curriculum frameworks" were subject to review, revision and subsequent modification, (2) the State Defendants failed to ensure that all teachers throughout Massachusetts were adequately prepared to teach what the students needed to know, (3) the Local Defendants failed to ensure that all teachers in the Holyoke Public Schools were adequately prepared to teach what the students needed to know and be able to do, and (4) the State and Local Defendants failed to monitor and ensure that content, knowledge and skills being assessed on the MCAS exam were actually taught in the classrooms by qualified teachers to all members of the class and subclasses.

250. The State and Local Defendants failed to ensure that the curriculum provided from grades kindergarten through twelve in each public school within their jurisdictions was aligned with the English Language Arts and Mathematics "curriculum frameworks."

251. The State and Local Defendants' use of the MCAS exam as a graduation requirement has and will adversely impact the plaintiffs and the class and subclasses they seek to represent by increasing student drop-outs, retention, and the number of students who will be barred from receiving a high school diploma.

252. All of these actions and inactions of the State and Local Defendants are arbitrary, capricious and fundamentally unfair in violation of the plaintiffs' substantive Due Process rights under the Fourteenth Amendment of the United States Constitution.

B. Procedural Due Process Violations

253. The Massachusetts Education Reform Act, which was enacted in 1993, required the Department of Education to develop a system for establishing and implementing content and performance standards that were embodied in sets of "curriculum frameworks," specifically for English Language Arts and Mathematics.

254. The statute further required the alignment of the curriculum taught in the public schools for each core subject with the "curriculum frameworks."

255. The statute contemplated that (1) there would be adequate time for training and retraining the teachers responsible for teaching the new material to the students and (2) students would have a fair opportunity to learn the new material before the administration of the MCAS exam.

256. The plaintiffs and the classes they seek to represent were in the *sixth* grade when the Department of Education issued the initial "curriculum frameworks." They had just

completed the *tenth* grade when the Department of Education recently revised the "curriculum frameworks."

257. The plaintiffs and the class they seek to represent have been denied their procedural due process rights under the Fourteenth Amendment of the United States Constitution because the State and Local Defendants have failed to provide them with adequate notice to learn the content, knowledge and skills covered by the MCAS exam.

258. The actions and inactions of the State Defendants and the Local Defendants violated the Due Process guarantee of adequate notice pursuant to the Fourteenth Amendment of the United States Constitution.

COUNT 2

(Violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution Against the State Defendants)

259. The plaintiffs, on behalf of themselves and the subclasses of (1) Black/African-American students, (2) Hispanic students, and (3) students with limited English proficiency whom they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 258 of this complaint.

260. The Fourteenth Amendment of the United States Constitution provides that "[n]o state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

261. Under M.G.L. c. 69, § 1I, the State Defendants were required to design a "system" that "shall take into account on a non-discriminatory basis the cultural and language diversity of students in the Commonwealth and the particular circumstances of students with special needs."

262. The State Defendants have violated the equal protection rights of the plaintiffs who are Black/African-American students, Hispanic students, students with limited English proficiency and the students comprising those subclasses.

263. Before the State Defendants finalized the MCAS exam, they knew as a result of their field testing and studies, that the use of the MCAS exam as a graduation requirement would have a disproportionate, adverse impact on Black/African-American students, Hispanic students, and students with limited English proficiency.

264. In developing the MCAS exam, the State Defendants specially sought and considered the race and ethnicity of students who answered questions during the test development process on a question-by-question basis.

265. With that knowledge, the State Defendants designed and constructed a test in which they intentionally eliminated questions in a manner that would injure racial and ethnic minorities.

266. The State Defendants also commissioned two validity studies to analyze the validity and reliability of the proposed MCAS exam. As set forth in Paragraphs 181 through 186, those studies concluded that the differences between the scores of Black/African-American students, white students and Hispanic students on the MCAS exam could be related to the students' opportunities to learn. They also highly recommended that the Department of Education conduct a statewide follow-up on the issues of ethnicity, course-taking patterns and eventual achievement. With the pending MCAS exam graduation requirement in mind, one study warned the Department of Education that the "[d]ifferential impact by ethnicity is a potentially serious issue that must be addressed."

267. The State Defendants ignored their own consultant's warning and proceeded to impose the MCAS exam as a graduation requirement on the Class of 2003.

268. The State Defendants' use of the MCAS exam as a graduation requirement has had a disproportional, adverse impact on Black/African-American students, Hispanic students and students with limited English proficiency.

269. The State Defendants' actions have caused significant harm to the plaintiffs and the subclasses of Black/African-American students, Hispanic students and students with limited English proficiency in violation of the Fourteenth Amendment of the United States Constitution.

COUNT 3

(Violation of Title VI of the Civil Rights Act, 42 U.S.C. § 2000d *et seq.*, Against the State Defendants)

270. The named plaintiffs, on behalf of themselves and the subclasses of (1) Black/African-American students, (2) Hispanic students and (3) students with limited English proficiency whom they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 269 of this complaint.

271. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, provides in pertinent part:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

272. The State Defendants are recipients of federal funds from the United States Department of Education.

273. As recipients of federal funds, the State Defendants are prohibited from discriminating against students based on race, color and national origin in elementary and secondary schools and school districts.

274. As set forth in paragraphs 259 through 269, the MCAS exam, as developed and implemented, discriminates against Black/African-American students, Hispanic students, and students with limited English proficiency enrolled in the Massachusetts public schools.

COUNT 4

(Violation of the Equal Education Opportunity Act, 20 U.S.C. § 1703(f), Against All Defendants)

275. The plaintiffs on behalf of themselves and the subclass of students with limited English proficiency that they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 274 of this complaint.

276. The Equal Education Opportunity Act, 20 U.S.C. § 1703, provides in pertinent part:

> No state shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by –
>
> (f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

277. The State and Local Defendants failed to take steps necessary to ensure that the members of the subclass of students with limited English proficiency received an education consistent with the requirements of the Equal Educational Opportunities Act to overcome language barriers so that plaintiffs could participate meaningfully in their respective school's education program and learn the content and skills on which they could expect to be assessed on the MCAS in violation of the Equal Educational Opportunity Act, 20 U.S.C. § 1703(f).

278. The State Defendants have failed to ensure that the MCAS exam has been validated for students with limited English proficiency.

279. It is inappropriate to use an English Language Arts test to assess students with limited English proficiency.

280. The State Defendants and Local Defendants have failed to ensure that schools are providing limited-English-proficient students with appropriate and effective instructional programs, in violation of 20 U.S.C. § 1703(f).

COUNT 5

(Violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, and Its Regulations, 34 C.F.R. Part 104 Against All Defendants)

281. The plaintiffs on behalf of themselves and the subclass of students with disabilities that they seek to represent incorporate by reference the allegations contained in paragraphs 1 through 280 of this complaint.

282. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, provides in pertinent part:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .

283. As recipients of federal financial assistance, the State and Local Defendants have discriminated against students with disabilities by providing less effective and less than comparable aids, benefits and services and by "utiliz[ing] criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap . . . ." 29 U.S.C. § 794; 34 C.F.R. § 104.4(b)(4)(i).

284. The MCAS exam, as developed and implemented, discriminates against students with disabilities enrolled in the Massachusetts public schools. 29 U.S.C. § 794; 34 C.F.R. §§ 104.4(b)(1), (4)(i)-(iii).

285. The requirement that all public school students in the Class of 2003 meet the competency determination set by the State Defendants for the MCAS exam in both English Language Arts and Mathematics has a discriminatory effect on students with disabilities throughout the State. 29 U.S.C. § 794; 34 C.F.R. § 104.4(b)(1).

286. The MCAS exam is not a valid instrument for assessing the knowledge and skills of students with disabilities. The State Defendants have failed to ensure that the "high stakes" MCAS exam has been differentially validated for the multiple purposes for which it is being used in assessing students with disabilities.

287. Use of the "high stakes" test is invalid and unfair because State and Local Defendants have failed to ensure that students with disabilities have had the opportunity to participate in the general curriculum to learn to the standards expected for all students that are embodied in the Massachusetts curriculum frameworks, been adequately educated, and have been effectively taught the content and skills being assessed. 29 U.S.C. § 794; 34 C.F.R. §§ 104.4(b)(1), (b)(4), 104.33(b), 104.34(a).

288. Equally effective, less discriminatory alternatives exist for distinguishing those students with disabilities who have been taught but have not learned what all students are expected to know and be able to do as assessed with accommodations, if necessary. 34 C.F.R. § 104.4(b).

289. Where students with disabilities capable of mastering the learning standards embodied in the "curriculum frameworks" are denied educational opportunities keyed to

attainment of the standards set for all students, they are provided instead an "aid, benefit or service that is not equal to that afforded others," that "is not as effective as that provided to others," and that is unnecessarily "different or separate," in violation of Section 504 and its regulations. 29 U.S.C. § 794; 34 C.F.R. §§ 104.4(a), (b)(1), (b)(4).

290. The MCAS exam is inappropriate to use as the *sine qua non* for obtaining a high school diploma when students with disabilities were not included in validity studies conducted by the State Defendants. 29 U.S.C. § 794; 34 C.F.R. §§ 104.4(a), 104.4(b)(1).

291. The State and Local Defendants have failed to ensure through oversight, monitoring and enforcement, that, *inter alia*, school districts and schools are providing students with disabilities effective teaching by qualified personnel knowledgeable and skilled to teach students with diverse learning needs, that instruction is aligned with the state standards embodied in the "curriculum frameworks", and members of the subclass are provided the opportunity to learn what they are expected to know. 29 U.S.C. § 794; 34 C.F.R. § 104.4(b)(4).

COUNT 6

(Violation of the Due Process Clause of the Massachusetts Constitution Against All Defendants)

292. The plaintiffs, on behalf of themselves and the class that they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 291 of this complaint.

293. Article X of the Declaration of Rights of the Massachusetts Constitution provides that "[e]ach individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property." Article XII of the Declaration of Rights of the Massachusetts Constitution provides that "no subject shall be arrested, imprisoned, despoiled or deprived of his property, or privileges, put out of the protection of the law."

294. As alleged in paragraphs 236 through 258, the State Defendants' and the Local Defendants' acts violate the due process clauses contained in Articles X and XII of the Massachusetts Constitution.

COUNT 7

(Violation of the Equal Protection Clause of the Massachusetts Constitution Against All Defendants)

295. The plaintiffs, on behalf of themselves and the class that they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 294 of this complaint.

296. Article I of the Declaration of Rights of the Massachusetts Constitution provides that "[a]ll people are born free and equal and have certain natural, essential and unalienable rights."

297. As alleged in paragraphs 259 through 269, the State Defendants' and the Local Defendants' acts violate the equal protection clause contained in Article I of the Massachusetts Constitution.

COUNT 8

(Declaratory Judgment Against the State Defendants Under Massachusetts State Law)

298. The plaintiffs, on behalf of themselves and the class that they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 297 of this complaint.

299. As set forth above, there is an actual controversy between the plaintiffs and the State Defendants concerning (1) the legality, validity and enforceability of the MCAS exam, (2) the state regulations which require students to pass the MCAS exam as the sole means of establishing a "competency determination" under the Massachusetts Education Reform Act, and (3) the State Defendants' implementation of the MCAS in general, that is fit for review in which

the challenged conduct has created a direct, immediate and substantial controversy between parties with adverse legal interests.

300. Pursuant to Massachusetts state law, including M.G.L. c. 231A, the plaintiffs seek: (1) a declaratory judgment stating that the MCAS exam is illegal and invalid for the reasons alleged in this complaint including, but not limited to, the State Defendants' failure to follow the provisions of the Massachusetts Education Reform Act and the State Defendants' *ultra vires* adoption of regulations in a manner which exceeds their statutory authority under the Massachusetts Education Reform Act; (2) a declaratory judgment stating that the state regulations which require the passing of the MCAS exam as the sole means of establishing a "competency determination" under the Massachusetts Education Reform Act (including specifically 603 C.M.R. § 30.03) are void, illegal and unenforceable for one or more of the reasons set forth in this complaint, including, but not limited to, the State Defendants' failure to follow the provisions of the Massachusetts Education Reform Act and the State Defendants' *ultra vires* adoption of regulations in a manner which exceeds their statutory authority under the Massachusetts Education Reform Act; and (3) a declaratory judgment stating that the State Defendants have failed to properly and adequately implement the provisions and requirements of the Massachusetts Education Reform Act for the reasons alleged in this complaint.

COUNT 9

(Declaratory Judgment Against All Defendants Pursuant to 28 U.S.C. §§ 2201 and 2202)

301. The plaintiffs, on behalf of themselves and the class that they seek to represent, incorporate by reference the allegations contained in paragraphs 1 through 300 of this complaint.

302. As set forth above, there is an actual controversy between the plaintiffs and the State Defendants concerning (1) the legality, validity and enforceability of the MCAS exam, (2) the state regulations which require students to pass the MCAS exam as the sole means of establishing a "competency determination" under the Massachusetts Education Reform Act, and (3) the State Defendants' implementation of the MCAS in general, that is fit for review in which the challenged conduct has created a direct, immediate and substantial controversy between parties with adverse legal interests.

303. Pursuant to 28 U.S.C. §§ 2201 and 2202, the plaintiffs seek: (1) a declaratory judgment stating that the MCAS exam is illegal and invalid for the reasons alleged in this complaint including but not limited to, the State Defendants' failure to follow the provisions of the Massachusetts Education Reform Act and the State Defendants' *ultra vires* adoption of regulations in a manner which exceeds their statutory authority under the Massachusetts Education Reform Act; (2) a declaratory judgment stating that the state regulations which require the passing of the MCAS exam as the sole means of establishing a "competency determination" under the Education Reform Act (including specifically 603 C.M.R. § 30.03) are void, illegal and unenforceable for one or more of the reasons set forth in this complaint, including, but not limited to, the State Defendants' failure to follow the provisions of the Massachusetts Education Reform Act and the State Defendants' *ultra vires* adoption of regulations in a manner which exceeds their statutory authority under the Massachusetts Education Reform Act; and (3) a declaratory judgment stating that the State Defendants have failed to properly and adequately implement the provisions and requirements of the Massachusetts Education Reform Act for the reasons alleged in this complaint.

VI. RELIEF REQUESTED

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Plaintiffs, on behalf of themselves and all other persons similarly situated, respectfully request that this Court:

1. Enter a judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and M.G.L. c. 231A declaring that the State Defendants have failed to comply with the requirements of M.G.L. c. 69 *et seq.*;

2. Enter judgment pursuant to 28 U.S.C. §§ 2201 and 2202 that the Board of Education's promulgation of 603 C.M.R. § 30.03, which requires members of the plaintiff class to pass the English Language Arts and Mathematics sections of the MCAS exam, as currently designed and implemented, as a prerequisite for receiving a high school diploma, constitutes a violation of the Massachusetts Education Reform Act, M.G.L. c. 69, *et seq.*, the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution and the Massachusetts Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, the Equal Education Opportunities Act, 20 U.S.C. 1703(f), and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;

3. Enter a preliminary and permanent injunction restraining the State and Local Defendants from requiring members of the plaintiff class to pass the English Language Arts and Mathematics sections of the MCAS exam as a prerequisite to receiving a high school diploma;

4. Enter an Order requiring the State Defendants to develop, with the input and assistance of the Plaintiffs and their experts, a valid assessment system for determining whether individual students have met the "competency determination" as set forth in the Massachusetts Education Reform Act;

5. Enter and Order that student assessments be used to improve the quality of teaching and learning particularly as it relates to improving the education of those students, and

for ensuring that all students, including those who are African-American, Hispanic, have limited English proficiency, a disability, or who are enrolled in public vocational technical education high schools have full and adequate opportunities to learn and to master those proficiencies;

6. Enter an Order requiring the State Defendants to ensure that public school teachers are provided with such in-service and professional development opportunities necessary so that they possess the knowledge and skills required to provide instruction consistent with the curriculum frameworks and the MCAS exam requirements and to teach effectively all members of the plaintiff class;

7. Award the plaintiffs their reasonable attorneys' fees and costs incurred in connection with this action pursuant to 42 U.S.C. § 1988;

8. Retain jurisdiction of this case until the State and Local Defendants have fully complied with the Orders of this Court; and

9. Award such other relief as the Court deems just and proper.

STUDENT 1, A Minor, by His Aunt and Next Friend, STUDENT 2, A Minor, by Her Mother and Next Friend, STUDENT 3, A Minor, by Her Mother and Next Friend, STUDENT 4, A Minor, by His Mother and Next Friend, STUDENT 5, A Minor, by His Mother and Next Friend, and STUDENT 6, A Minor, by Her Grandmother and Next Friend, on Behalf of Themselves and All Other Persons Similarly Situation,

By their attorneys,

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DATE: September 19, 2002

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